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FM AMCONSUL LAGOS
TO RUEHC/SECSTATE WASHDC PRIORITY 9224
INFO RUEHUJA/AMEMBASSY ABUJA 9024
RUEHWR/AMEMBASSY WARSAW 0467
RUEHCD/AMCONSUL CIUDAD JUAREZ 0446
RUEHIT/AMCONSUL ISTANBUL 0445
RUEHZK/ECOWAS COLLECTIVE
RUCPDOC/DEPT OF COMMERCE WASHDC
RULSDMK/DEPT OF TRANSPORTATION WASHDC
RHEBAAA/DEPT OF ENERGY WASHDC
RUEATRS/DEPT OF TREASURY WASHDC
RUEAIIA/CIA WASHINGTON DC
RHEFDIA/DIA WASHDC

UNCLAS LAGOS 000507

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SENSITIVE

DEPT PLEASE PASS TO USTR
DEPT PLEASE PASS TO JAMES WILLIAMS, OPIC

E.O. 12958: N/A

TAGS: ECON PGOV EINV PREL NI

SUBJECT: AES - UPDATE ON CONTRACT DISPUTE

REF: LAGOS 147

SENSITIVE BUT UNCLASSIFIED; HANDLE ACCORDINGLY

¶1. (U) Summary: On July 11, AES Nigeria Barge Ltd. (AES), a U.S. power services company, met with President Umaru Yar'Adua to discuss an on-going tax exemption dispute (reftel). The meeting was attended by all stakeholders, including the Ministry of Finance and Energy, Federal Inland Revenue Service (FIRS) and the Power Holding Company of Nigeria (PHCN). AES perceived the meeting as a breakthrough after months of impasse and looming escalation. End summary.

A Focused And Objective Meeting May Yield Resolution

¶2. (U) On July 11, Hassaan Mirza, Chief Financial Officer and Ahmer Nadeem, Managing Director, AES Nigeria Barge Ltd. (AES), a U.S. power services company, met with President Umaru Yar'Adua to discuss an on-going tax exemption dispute (reftel). The meeting was attended by all stakeholders, including Vice President Jonathan Goodluck, Secretary to the Federation, Babagana Kingibe, Special Advisor to

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the President on Power, Joseph Makaju, and representatives of the Ministry of Finance and Energy, Federal Inland Revenue Service (FIRS), and the Power Holding Company of Nigeria (PHCN).

¶3. (U) After a presentation on the tax dispute issue, Nadeem appealed to Yar'Adua to intervene in order to avoid arbitration. Makaju expressed satisfaction with the Power Purchase Agreement (PPA) Amendment already negotiated, and faulted the Ministry of Finance for the delay in its implementation since June 2006.

¶4. (U) President Yar'Adua asked questions aimed at ascertaining the validity of the PPA, AES' legal position, Lagos State's involvement, and the likely outcome of arbitration. The Solicitor General conceded that arbitration would likely be unfavorable for the GON.

¶5. (U) Some officials were dissatisfied at what they perceived as the "one-sided" nature of the contract, noted Mirza. Yar'Adua, however, was focused on understanding the facts of the case and instructed those complaining to put aside their feelings as to the contract being unfair, as the 'contract had been entered into'.

¶6. (U) President Yar'Adua asked whether AES was still agreeable to the PPA Amendment, which Mirza and Nadeem confirmed. Since the meeting, Mirza said Yar'Adua constituted a committee, headed by Makoju and instructed to report to the President directly, to deal with the issue.

Comment

¶7. (SBU) Post has been following this issue closely over the past few months, and we are encouraged by President Yar'Adua's objective and pragmatic approach to this matter. This may signal not only resolution in this particular case, but, more broadly, increased transparency and respect for contractual obligations by the government. End comment.